

CLIENT ALERT

Export Controls: State Offers Salve to Longstanding Irritant for Dual and Third Country Nationals

Aug.11.2010

Today, the Directorate of Defense Trade Controls published a proposed rule ([75 Fed. Reg. 48625](#) (Aug. 11, 2010)) that would soften considerably the longstanding policy of requiring authorized foreign recipients of ITAR controlled technical data (or defense articles) to obtain express authorization for its employees who are dual or third country nationals to have access to the controlled information. State recognizes its prior policy implicates human rights issues and has caused significant concern for companies (and governments) of major allies such as Canada and the United Kingdom where employment laws strictly limit use of citizenship and nationality data.

The proposed rule, if adopted in its current form, would not signal a complete retreat. It would cover only those bona fide, regular employees of the foreign end user or consignee, and only those located in the same physical territory as the end user is located or the consignee operates. Furthermore, the proposed rule would require that the end user or consignee have in place screening systems designed to ensure that its employees agree not to retransfer any of the information received except as authorized and that they do not have regular or substantive contact with proscribed countries listed in § 126.1. This latter requirement which must be documented in a technology security/clearance plan may prove to be burdensome but significantly less offensive to our allies than the prior policy.

Interested parties have until September 10, 2010 to submit comments on the proposed rule.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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